



Alan Lloyd Ph.D.
Agency Secretary

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger
Governor

MEMORANDUM

TO: Bill Gausewitz, Director
Office of Administrative Law
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FROM: Lisa Brown
Assistant General Counsel for Enforcement
California Environmental Protection Agency

DATE:

SUBJECT: Regulation for R-2005-18, Readoption of Emergency Regulations for the Unified Program Single Fee System for State Agencies

This is a request for approval to readopt the emergency regulations titled "Unified Program Single Fee System for State Agencies," R-2005-18. The emergency regulations were adopted on September 26, 2005, and will expire on January 24, 2006. The emergency regulations are necessary for the Secretary of the California Environmental Protection Agency (Cal/EPA) to establish a methodology for setting the fee to be paid by regulated businesses in specific counties. These are any counties where a state agency is designated as the Certified Unified Program Agency (CUPA). These regulations address the specifics necessary to allow the State to collect fees for serving the unified program agency functions, as allowed by current law, once it is designated as the CUPA.

In January 2005, the Secretary of Cal/EPA designated the Department of Toxic Substances Control (DTSC) as the state agency CUPA for Imperial and Trinity Counties. The amount of the fee each business must pay for CUPA activities is based upon DTSC's necessary and reasonable costs of regulating each specific activity conducted by that business.

DTSC has made significant progress in implementing the Unified Program and is finalizing the accounting system to begin billing for the CUPA fees. DTSC is coordinating with Trinity and Imperial Counties to further identify all regulated businesses to ensure that the applicable fees are billed correctly. DTSC is also developing procedures for resolving fee disputes. In addition, DTSC has established a new office in Imperial County to reduce the cost of operating the program.

On behalf of Cal/EPA, DTSC has finalized the Form 399 Economic and Fiscal Impact Statement and the proposed permanent regulations. DTSC certifies that good faith progress is being made to formally adopt permanent regulations to replace the emergency rules. The permanent proposed regulations are being submitted concurrently with the readoption of emergency regulations to the Office of Administrative Law (OAL) for publication by January 20, 2006. A public hearing is scheduled for March 6, 2006, in Sacramento at the conclusion of the 45-day comment period.

Readopting the emergency regulations will allow DTSC to continue implementing the Unified Program and begin collecting the CUPA fees. The fee is designed to make the CUPA program entirely self-funding in jurisdictions where DTSC acts as the CUPA. Since the program is self-funding, these regulations will have no net impact on local, state, or federal revenue or costs. In the absence of the proposed regulations, there is no funding mechanism that would allow DTSC to carry out its environmental protection duties as the designated agency under Chapter 6.11 of the Health and Safety Code.

Cal/EPA has made a preliminary determination that readoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to Government Code part 7, division 4, section 17500 et seq., or other non-discretionary costs to local agencies. Local agencies may experience savings, in an unknown amount, to the extent they will not perform the governmental activities that will be done instead by DTSC when funding for those activities is in place. Local agencies, as with all other businesses and persons, are already subject to a requirement that they pay a CUPA fee pursuant to Health and Safety Code section 25404.5, insofar as they engage in any of the activities regulated by the CUPA. Cal/EPA expects to bill the fee to local agencies after the methodology for setting the fee is established by the proposed regulations. Local agencies will be exempt if the activity is exempt from fees pursuant to Health and Safety Code sections 25174.7 or 25205.3.

Cal/EPA has made a preliminary determination that the proposed regulations will have no net impact on state revenue or costs. The fee is designed to make the CUPA program entirely self-funding in jurisdictions where the designated agency acts as the CUPA. Therefore, increased revenue will exactly equal increased cost.

Health and Safety Code section 25404.6, subdivision (c), grants the Secretary of Cal/EPA authority to adopt regulations necessary for the orderly administration and implementation of the unified program, as established by Health and Safety Code, division 20, chapter 6.11, section 25404 et seq. Section 25404.6, subdivision (c), provides further that the "secretary shall adopt these regulations as emergency regulations" and "the adoption of the regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of public peace, health, safety, and general welfare."

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For readopting the emergency regulations, the following documents are attached:

- Economic and Fiscal Impact Statement (Std. 399);
- Regulations Submission Form (Std. 400);
- Finding of Emergency/Informative Digest;
- Regulation Text; and
- Notice of Exemption.

If you have any questions about this memorandum or the adoption request, please contact Ms. Mary Wilson of DTSC at (916) 323-7367 or by email at mwilson@dtsc.ca.gov. If she is unavailable, please contact Ms. Sonia Low of DTSC at (916) 323-9757 or by email at slow@dtsc.ca.gov.

Attachments

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